IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.911 of 2004

Dattaram R.Mane .. Appellant

versus

Vijaya C. Nair & Anr. .. Respondents

...

Mr.A.Y. Sakhare i/b J.J. Shah for the appellant

None for the respondents.

CORAM : D.G. KARNIK, J

DATED : 19th October 2006

P.C.:

1. Heard learned counsel for the appellant. None present for the respondents.

2. This appeal is directed against the order dated 30th September 2004 passed by the learned Judge of the City Civil Court Mumbai restraining the

appellant by an order of injunction from dispossessing the respondents from the suit premises till disposal of the suit.

3. The suit premises originally belonged to Smt.Shanta Durgadas Mane, the aunt of the appellant, who died on 28th August 2004. Shantabai was unmarried and the appellant is an heir of Shantabai. According to the appellant, he became owner of the suit property on death of Shantabai on 28th August 2004.

4. The case of the respondents is that Shantabai was living alone in the suit premises. As she became ill, in August 2004 the respondents, who were residing nearby, were looking after her. Respondents and Shantabai were on friendly terms and respondents used to look after Shantabai even earlier. The respondents came in possession of the suit premises after the death of Shantabai. Apprehending dispossession at the hands of the appellant, the respondents filed a suit against appellant for an injunction restraining him from dispossessing them. In the said suit, respondents took out a motion for an interim injunction restraining the appellant from dispossessing them during the pendency of the suit. By an order dated 30th September 2004,

the trial court allowed the motion and granted the injunction. Aggrieved appellant is in appeal.

5. The appellant in his reply before the trial court has stated that he is the nephew and the heir of Shantabai. This statement has not been denied by the respondents. On the other hand in the plaint, they themselves have stated that the appellant claims to be the nephew of the deceased Shantabai. As Shantabai was unmarried, the appellant is an heir of Shantabai and therefore entitled to the suit premises. The respondents have no right of whatsoever nature in the suit premises.

6. The respondents claim to be in possession. Their claim of possession is disputed by the appellant who claims that he is in possession of the suit premises. At this stage it is difficult to say who was in possession of the suit premises on the date of the suit. One thing however is certain that the respondents are not in settled possession of the suit premises. Shantabai was alive till 28th August 2004 and therefore there was no question of respondents being in possession till her death. Suit has been filed on 6th September 2004 i.e. in less than 10 days

of her death. They were her neighbours and it appears that they want to grab the premises belonging to her taking advantage of the fact that she was unmarried. They not being in settled possession of the suit premises are not entitled to an injunction against the true owner of the premises. Appellant is an heir of Shantabai and appears to have inherited her property. In the circumstances, the trial court erred in granting the injunction.

7. It may be noted that at the time of admitting the appeal, by an order dated 2nd November 2004, this court has granted stay to the order of injunction passed by the trial court. Thus there has been no injunction operative against the appellant. If the appeal is dismissed, the effect of dismissal would be to revive the injunction against the appellant who is the true owner of the property. The respondents are strangers who do not have any interest in the suit property. In the circumstances, the impugned order needs to be set aside and is accordingly set aside.

8. Appeal is allowed and impugned order is set aside. The motion of the respondents for injunction stands dismissed.

(D.G. KARNIK, J)